

GEOSEARCH, INC.

IBLA 80-120

Decided October 31, 1980

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying protest against oil and gas leases W 64073, W 64105, W 66787, W 67767, and W 67982.

Set aside and remanded.

1. Oil and Gas Leases: Applications Drawings -- Oil and Gas Leases: Bona Fide Purchaser

Where BLM does not officially reject or return the simultaneous noncompetitive oil and gas lease offers drawn with second and third priority after the issuance of the leases to the first drawees, the second and third drawees retain an interest which must be considered if the leases are cancelled because the first drawees' offers are defective, provided that the leases have not been assigned to bona fide purchasers.

2. Applications and Entries: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest

Action on a protest against issuance of a lease to the first-drawn offeror, a client of Resource Service Company, a leasing service, and issuance of the lease, properly is suspended pending appropriate action by BLM to determine whether there has been a violation of the disclosure and interest regulations. BLM will investigate a filing service's relationship with the offeror where it appears that the disclosure and interest regulations may have been violated by a referral program offered by the filing service.

APPEARANCES: Melvin E. Leslie, Esq., Salt Lake City, Utah, for appellant; Thomas W. Ehrmann, Esq., Wayne E. Babler, Jr., Esq., William R. Hamm, Esq., Milwaukee, Wisconsin, for Robert Cieslik and Resource Service Company, Inc.

#### OPINION BY ADMINISTRATIVE JUDGE FISHMAN

On October 8, 1979, Geosearch, Inc. (appellant), filed a protest against the validity of five oil and gas leases in the Wyoming State Office, Bureau of Land Management (BLM). These leases had been issued between July 1978 and June 1979 to offerors whose drawing entry cards were drawn with first priority in simultaneous drawings held by BLM between May 1978 and April 1979. Appellant stated in its protest that it had purchased the interests of individuals whose drawing entry cards were drawn with second priority in the simultaneous drawings, and that it therefore had an interest in protesting the continued validity of the leases. All five original lessees were apparently clients of Fred L. Engle, d.b.a. Resource Service Company, Inc. (RSC), at the time their offers were filed.

By decision dated October 18, 1979, BLM dismissed appellant's protest as follows:

With regard to [W 66787, W 67767, and W 67982] the No. 2 and No. 3 drawee's cards were returned in June, 1979, and, no appeal having been filed as of July, 1979; their offers no longer remain viable, nor do they retain any possibility of an interest in these leases. Geosearch, Inc., 41 IBLA 291, 293 (1979).

Before the date of issuance of these leases, all of the successful drawees had filed copies of their service agreements with this office. We have enclosed photocopies of these agreements, which have been deemed not to be in violation of 43 CFR 3102.7 because of the following wording of the fifth paragraph; "When I win a drawing, R.S.C. provides, at my option, the service to sell the rights I have won. This agency contract for sale is available only after the drawing is completed." (Italics our own.) Complementing each signed agreement is an attached notarized statement to the effect that the agreement constitutes the whole understanding between the parties. No prima facie evidence to the contrary has been presented.

Since the agreement does not create an interest in Resource Service Company, Inc., there was no violation of 43 CFR 3112.5-2, either in the multiple filing of its clients or in any filing in the name of Fred Engle.

The appeal from the decision was timely noted. The decision names the original lessees of the five (5) parcels in question as

adverse parties and Fred L. Engle has accordingly submitted a brief in opposition on behalf of his clients, the five (5) original lessees.

In its statement of reasons for appeal, appellant advances three arguments in support of its position that the Board should either reverse BLM and thus cancel the outstanding leases or refer this matter to an Administrative Law Judge for further fact finding. First, appellant contends that "the purported return by BLM of the 2nd and 3rd drawee's simultaneous filing cards cannot deprive Geosearch of any rights it may have in respect to W-66787, W-67767, and W-67982." Second, it avers that the written service agreement between RSC and its clients accords RSC an undisclosed interest in the leases, in violation of 43 CFR 3102.7. Third, it contends that the filing of offers by Fred L. Engle and members of his family on the subject parcels constitutes a multiple filing in violation of 43 CFR 3112.5-2. Appellant asserts primarily that the successful offerors' use of RSC gave RSC an interest in the leases in violation of 43 CFR 3102.7 and 43 CFR 3112.5-2. Appellant claims that this interest arose from use of RSC's address on the drawing entry card (DEC), from the agreement between RSC and the offerors, and from the leasing services's pattern of operation.

[1] Appellant supports its first argument by asserting that BLM's return of the second and third drawees' simultaneous filing cards did not comport with the Fifth Amendment procedural due process requirement of notice and opportunity for hearing because the drawees were not given notice in the form of a decision or a registered or certified letter, indicating that any rights the second and third drawees might have, in respect to any given parcel, would be eliminated if they did not appeal within 30 days after receipt of the returned filing cards.

43 CFR 3112.2-1(a)(4) provides that "[u]nsuccessful drawees will be notified by the return of their respective entry cards."

That regulation must be read in in pari materia with 43 CFR 4.410 which affords a right of appeal to the Board, with exceptions not pertinent here, to "any party to a case who is adversely affected by a decision of an office of the Bureau of Land Management." The return of an entry card under 43 CFR 3112.2-1(a)(4) constitutes a decision so adversely affecting a party, i.e., a rejection of the offer.

The case files are devoid of any official documents indicating all the drawees were provided notice of rejection. In fact the case records of W 64073 and W 64105 still have the unreturned Nos. 2 and 3 DEC's. Accordingly, offers of second and third drawees remained on file. Also, as the records do not establish that they were notified that their offers were rejected, it cannot be said that their appellate rights terminated. Thus, their offers remained viable.

Geosearch, Inc., 41 IBLA 291 (1979); Geosearch, Inc., 40 IBLA 397 (1979); Geosearch, Inc., 39 IBLA 49, 51, n.1 (1979), Beard Oil Co., 77 I.D. 166 (1970). In the circumstances, the protest against the oil and gas leases will be considered in this decision and we need not reach the "due process" argument.

[2] We turn now to the issues arising by virtue of the arrangements between the leasing service and its clients. With the information available to it at the time of making its decision, the BLM decision was proper. The basic agreement between RSC and its client which was reviewed by BLM has been held not to create an interest in the filing service company because its client has the option to avail itself, as it chooses, of the company's offer to sell the lease for him at a commission. Ervin J. Powers, 45 IBLA 186 (1980); Geosearch, Inc., 40 IBLA 267 (1979); Geosearch, Inc., 39 IBLA 49 (1979). Likewise, mere use of the filing service company's address on a DEC does not disqualify the offer, nor can a filing service company be inferred to have an interest in the lease from use of its address where the offer is filed under regulations which do not require a different address. Id. In Ervin J. Powers, *supra*, a majority of the board answered another contention raised by appellant here, namely, an assertion that there were violations of the regulations because Fred L. Engle, President of RSC, and other members of his family filed offers competing with those of the priority drawees. In Powers the majority ruled that Engle's competition with its clients did not constitute a violation of the regulations which should be charged against the client whose offer had drawn first priority. The majority implied that there might be a violation if Engle had won.

The above-cited Board decisions would be dispositive of this appeal if it were not for an additional arrangement between the leasing service company and its clients which was considered for the first time in Lloyd Chemical Sales, Inc., 49 IBLA 392 (1980). This concerns a referral program whereby RSC agrees to pay a client, A, up to \$ 2,000 per sale if another client, B, referred to RSC by client A, wins in the drawing, and uses RSC's sales agency agreement under which RSC negotiates sales with oil companies or other buyers with a commission to RSC. <sup>1/</sup> The referral arrangement raises possibilities for violations of the regulations which would not be present in the absence of

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<sup>1/</sup> The terms of RSC's sales agency option provides:

"When I win a drawing, R.S.C. provides, at my option, the service to sell the rights I have won. This agency contract for sale is available only after the drawing is completed. Any final negotiated price is subject to my approval. If I utilize R.S.C.'s agency contract for sale and they or I obtain a buyer during the 5-year term of the contract, I understand the service fee to R.S.C. is as follows:

**OUTRIGHT SALE OF OIL & GAS RIGHTS**

\$ 1 to \$ 200,000.00 - - - - - Service fee to R.S.C. 16%

Over \$ 200,000.00 - - - - - Service fee to R.S.C. 12%

such an arrangement. For example, client A, the person making the referrals to RSC could very well have undisclosed agreements or understandings with the persons it refers to RSC, clients B, C, et al., that they will use RSC's agency sales service. The referral client A would have an interest in up to \$ 2,000 of the proceeds from each lease sale based upon his agreement with RSC and its agreement with the referred person. As defined in 43 CFR 3100.0-5(b), an "interest" in the lease includes, but is not limited to

[R]ecord title interest, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

If this interest is not disclosed on the DEC there would be a violation of 43 CFR 3102.7, requiring the disclosure of persons who have an interest in the offer or lease if issued. The commission or referral fee which client A would receive if its referred person, B, wins at a drawing, falls within the meaning of "interest" as defined in the regulation, as it would constitute a "claim or any prospective or future claim to an advantage or benefit from a lease." The fact that this claim would be asserted against RSC makes no difference since it is based upon RSC's agreement with the other client, B, as well as the agreement between the two clients, A and B, and the benefit is derived from a share of the lease sale proceeds.

Furthermore, the possibility of undisclosed agreements or understandings between clients and prospective clients of RSC might create a situation where offers are filed in their behalf by RSC at one drawing. Thus, a client or clients might have interests in many offers submitted at a drawing of persons referred to RSC by them. RSC may also be deemed a third party beneficiary to such agreements since it would reap the benefit of the clients' understandings that only RSC would negotiate the sale of a lease and receive its commission. It

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fn. 1 (continued)

IN EVENT OF ROYALTY PAYMENTS

\$ 1 TO \$ 2000,00.00 Annually - - - Service Fee to R.S.C. 16%

Over \$ 200,000.00 Annually - - - - Service fee to R.S.C. 12%

"If I do not receive at least \$ 10,000 gross in aggregate from a sale negotiated by R.S.C., they will process up to 300 additional applications which I may choose to make free of their service charge."

appears there may very well be violations of the regulation prohibiting multiple filings, 43 CFR 3112.5-2, which provides in part:

When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.1-6(b), all offers filed by either party will be rejected. Similarly, where an agent or broker files an offer to lease for the same lands in behalf of more than one offeror under any agreement that if a lease issues to any of such offerors, the agent or broker will participate in any proceeds derived from such lease, the agent or broker obtains thereby a greater probability of success in obtaining a share in the proceeds of the lease and all such offers filed by such agent or broker will also be rejected. Should any such offer be given a priority as a result of such a drawing, it will be similarly rejected.

The Secretary of the Interior, by his temporary suspension of onshore oil and gas leasing for an investigation into fraud and abuse of the regulations, has made it clear that this Department will not countenance schemes or arrangements by leasing services or others which might constitute a fraud or abuse of the regulations. The Secretary, as the guardian of the public lands and resources, must assure their disposal is made in accordance with the law and regulations. And, specifically, with reference to the simultaneous leasing process, we have said: "[T]his Board has a concomitant obligation to preserve the integrity of the process." Lee S. Bielski, 39 IBLA 211, 86 I.D. 80, 89 (1979).

The facts are not as clear here as in Bielski to show fraud and a violation of the regulations. However, there have been additional facts shown to those considered in the Geosearch cases cited, supra. The issue here is identical to Lloyd Chemical, supra, where the client referral program of the leasing service was first brought to the attention of this Board. In the circumstances, it is appropriate for BLM in the first instance to consider the issues raised concerning the referral program and take appropriate action to determine if there has been a violation of the regulations prohibiting multiple filings and requiring disclosure of interests in the lease offers. It would be important to know if and to what extent RSC clients who made referrals participated in the filing in which the persons referred to RSC also participated, and whether the clients have any agreements, understandings, or arrangements with other persons participating in these drawings using RSC's services.

The assignments in each lease ran from original lessee (offeror) to the present corporate owner. No effort was made to encumber the chain of title. There is a rebuttable presumption of bona fides, O'Kane v. Walker, 561 F.2d 207, 211 (10th Cir. 1977), and that presumption is not easily dissipated and overcome. Id.; Southwestern Petroleum Corp. v. Udall, 361 F.2d 650 (10th Cir. 1966).

In O'Kane the court held that defendant Walker was a bona fide purchaser of a Federal oil and gas lease, without actual or implied knowledge of any facts which would have put him on notice of unrecorded assignment by his vendor to another, or which would have created a further duty to inquire therein, where the price Walker paid was low but not unreasonably so in view of the short remaining lease term and the highly speculative nature of the investment, where the Bureau of Land Management records were not such as to create a duty of further inquiry into matters not of record at the BLM, and where the vendor's statement that the assignment would be without warranty was not unusual but, in fact, was the expected course of conduct.

Appellant's protests should be suspended while BLM considers the matters and takes appropriate action. Thereafter, BLM shall issue a further decision with the right of appeal to this Board by any party adversely affected thereby.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for appropriate action consistent with this decision.

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Frederick Fishman  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

